IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

OP.No. 26604 of 2001(P)

PETITIONER:

DR. G. JAIKRISHNAN,
MONOSITE SURVEY PROJECT,
B.A. R.C , IRE COMPUS,
BEACH ROAD, QUILON-1.

BY ADV. SRI.M.A.MANHU

RESPONDENTS:
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1. **STATE OF KERALA,**
   REP. BY THE CHIEF SECRETARY,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **SECRETARY, HEALTH & FAMILY WELFARE DEPARTMENT,**
   SECRETARIAT, THIRUVANANTHAPURAM.

3. **THE PRINCIPAL, GOVT. MEDICAL COLLEGE,**
   KOZHIKODE.

4. **ACCOUNTANT GENERAL,**
   OFFICE OF THE ACCOUNTANT GENERAL,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON 06/07/2007 DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 43104/2001 IN OP NO. 26604/2001 P.

DISMISSED

06/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE (P) N0. 145/2001/H& FWD DT. 16/6/00 THIRUVANANTHAPURAM.

EXT.P2. COPY OF THE REPRESENTATION DT. 5/6/01 BY THE PETITIONER TO THE R4.

EXT.P3. COPY OF THE ORDER DT. 6/7/01 BY THE R4.

RESPONDENT'S EXHIBITS

EXT.R3A. COPY OF THE PROCEEDINGS DT. 17/12/96.

EXT.R3B. COPY OF THE PROCEEDINGS DT. 31/7/97.

True copy

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.26604 of 2001-P

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Dated this the 6th day of July, 2007.

JUDGMENT

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Petitioner, a post graduate with M.D. in Bio-chemistry, was appointed as a Lecturer on provisional basis, following a notification issued by the Principal of the Government Medical College, Kozhikode as available in the files. That notification was, obviously, one to provide immediate stop gap appointments awaiting recruitment of regular hands through the Public Service Commission or provisional hands through the Employment Exchange. He joined duty with effect from the forenoon of 17-12-1996. Ext.R3(a) shows that his appointment as a provisional Lecturer is liable to be terminated as soon as

"PSC/Employment" hand joins duty, whichever is earlier and his service was also liable to be terminated at any time without notice. By Ext.R3(b) proceedings, at his request, his service was terminated with effect from the afternoon of 31-7-1997. In that document it is recorded that the petitioner was working as provisional Lecturer (on contract basis). He then joined BARC under the Government of India.

2. After the petitioner left on 31-7-1997, the Government issued Ext.P1 Government Order dated 16-6-2000 with effect from 1-1-1996. By that Government Order, revision of scales of pay and allowances of the teaching staff of Medical, Dental and Pharmaceutical Science Colleges in the State was brought in with effect from 1-1-1996 as shown in the Annexure to that order and the employment of the petitioner, as noted above, was during the period after 1-1-1996.

3. Having been qualified to hold the designation of

Senior Lecturer, while he was in service as aforesaid, the petitioner claims that his emoluments for the period during which he worked were to be revised and released in the revised scale of Rs.10000-325-15200 with all other benefits, including allowances etc. as are stated in Ext.P1.

4. The contention in opposition to the writ petition, going by the counter affidavit, is that the appointment of the petitioner was only a provisional appointment in terms of Rule 9(a)(i) of Part II of Kerala State and Subordinate Services Rules, the "General Rules", for short. The learned Government Pleader further argued that Ext.R3(b) would also show that the appointment was on contract basis and therefore, the emoluments paid already to him ought to be treated as payments made as against contract appointment. It is further argued on behalf of the Government that the revision of scales as per Ext.P1 order will apply only to those who are in the regular service of the Government and that general pay revisions to other employees of the State

Government will not be applicable to those who are covered by Ext.P1 scheme.

5. Before considering the terms of Ext.P1 Government Order, the quality of appointment of the petitioner needs to be determined. Rule 9A of Part II of the General Rules provides for appointment by agreements. The petitioner's appointment is not one such. Where it is necessary in the public interest, owing to an emergency which has arisen, to fill immediately a vacancy and there would be undue delay in making such appointment in accordance with the General Rules and Special Rules, the appointing authority may make temporary appointments in terms of Rule 9 of the General Rules. Rule 9(a)(ii) of the General Rules can be resorted to in case of short vacancies, in the contingencies contemplated therein. Rule 9(a)(iii) provides that a person appointed under clause (i) shall be replaced as soon as possible by a member of the service or an approved candidate qualified to hold the post under the

Special Rules. The proviso to that clause enjoins that replacement of persons appointed under clause (i) shall be in the order of seniority based on length of temporary service in the unit. The appointment of the petitioner is, therefore, essentially under clause (i) of Rule 9(a) of the General Rules.

6. Clause (v) of Rule 9(a) provides that a person appointed under clause (i) shall be paid the minimum pay in the time scale of pay applicable to such service, class or category. Time scale of pay means pay which, subject to any conditions prescribed in the Kerala Service Rules, rises by periodical increments from a minimum to a maximum (See Rule 12(35) in Part I KSR).

7. The second proviso to clause (v) of Rule 9(a) provides that the persons appointed temporarily through Employment Exchanges shall not be eligible for increment in the time scale even if they complete the prescribed period of service fixed for sanctioning such increment. When such

appointment is made temporarily through Employment Exchanges, the persons so appointed shall not be eligible for increment in the time scale. [See **Mohammedkutty v. State of Kerala**, 1989 (2) KLT 155 and **Mohanan v. State of Kerala**, 1991 (2) KLT SN 22 (Case No.33)]. This will apply even to cases where the appointing authority makes appointment temporarily, on emergency basis, even awaiting temporary appointments through Employment Exchange.

8. Therefore, a person who has been temporarily appointed in terms of Rule 9(a)(i) of the General Rules, is entitled to be paid the minimum pay in the time scale of pay applicable to the category to which he is so appointed but shall not be eligible for increment in the time scale.

9. Ext.P1 is the revision of scales of pay made by the Government with effect from 1-1-1996 for the reasons stated in the first paragraph of that Government Order. The revised scales of pay and allowances as contained in the

Annexure to that Order are made applicable with effect from 1-1-1996 in terms of paragraph No.2 of that Government Order. The teaching staff of the Medical, Dental and Pharmaceutical Science Colleges in the State are, therefore, entitled to the pay scales contained in Annexure to the said order as the scales of pay from 1-1-1996. They will not be entitled to any general pay revision which may apply only to the other Government employees, as stated in the third paragraph of Ext.P1 Government Order. By the retrospective operation of the scales of pay with effect from 1-1-1996, the effective scale of pay applicable to the category of Lecturer with post graduation was Rs.10000-325-15200 when the petitioner was appointed provisionally with effect from 17-12-1996. Therefore, he is entitled to draw the minimum pay in that time scale of pay of Rs.10000-325-15200 without any eligibility for increment.

In the result, this writ petition is allowed in the following terms:

(i)Ext.P3 is quashed.

(ii)It is declared that the petitioner is entitled to pay and allowances determined by fixing his pay at the minimum in the scale of pay of Rs.10000-325-15200, in terms of Ext.P1 Government Order.

(iii)The respondents are directed to release all monetary benefits due to the petitioner on account of the aforesaid declaration within a period of three months from the date of receipt of a copy of this judgment.

(iv)The parties shall bear their respective costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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JUDGMENT

Dated: 6th July, 2007.